

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

DUANE WITZLIB,
Plaintiff,

v.

Case No. 08C0342

ROBERT COHEN,
Defendant.

ORDER

I granted plaintiff default judgment in this action under the Employee Retirement Income Security Act ("ERISA") to obtain relief for defendant Robert Cohen's failure to provide ERISA plan documents. He now moves for attorney fees pursuant to 29 U.S.C. § 1132(g)(1).

An award of attorney's fees under § 1132(g)(1) is appropriate when the non-prevailing party's litigation position was not substantially justified. Lowe v. McGraw-Hill Cos., 361 F.3d 335, 338 (7th Cir. 2004). A five factor test aids in this analysis: (1) the degree of the offending parties' culpability or bad faith; (2) the degree of the ability of the offending parties to satisfy personally an award of attorneys' fees; (3) whether or not an award of attorneys' fees would deter other persons acting under similar circumstances; (4) the amount of benefit conferred on members of the pension plan as a whole; and (5) the relative merits of the parties' positions. See Herman v. Cent. States, 423 F.3d 684, 696 (7th Cir. 2005). The present matter easily meets this standard as defendant defaulted, thereby failing to advance any position at all. As such, plaintiff is entitled to attorneys' fees.

Examining plaintiff's submissions, I find that the requested amount of \$4,370.48 is reasonable. Therefore,

IT IS ORDERED that plaintiff's motion for attorney's fees is **GRANTED** and that fees are awarded in the amount of \$4,370.48.

Dated at Milwaukee, Wisconsin this 25th day of April, 2011.

/s _____
LYNN ADELMAN
District Judge